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7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE DISTRICT OF ARIZONA

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12 CAROL ANN WALLACE, )  
13 Plaintiff, ) No. CIV 04-492 PHX RCB  
14 vs. ) O R D E R  
15 INTEL CORPORATION as )  
Administrator; INTEL CORPORATION )  
16 LONG-TERM DISABILITY BENEFIT )  
PLAN; and MATRIX ABSENCE )  
17 MANAGEMENT, Inc., )  
18 Defendants. )  
19 \_\_\_\_\_)

20 Plaintiff Carol Ann Wallace challenges the rejection of her  
21 claim for long-term disability ("LTD") benefits under the Intel  
22 Corporation Long-Term Disability Plan (the "Plan" or "LTD Plan").  
23 Following the denial of benefits, and an unsuccessful appeal,  
24 Plaintiff commenced this action pursuant to 29 U.S.C. § 1132 on  
25 March 11, 2004 (doc. # 1).

26 On September 28, 2004, the Court issued a scheduling order  
27 (doc. # 20) pursuant to which all dispositive motions in this case  
28 were required to be filed by May 31, 2005. On May 25, 2005,

1 Defendants Intel Corporation ("Intel"), Matrix Absence Management,  
2 Inc. ("Matrix" or the "Administrator"), and the Plan filed a motion  
3 for summary judgment (doc. # 33). Plaintiff then filed a motion  
4 (doc. # 35) seeking an extension of time to file a cross-motion for  
5 summary judgment concurrent with her response to Defendants'  
6 motion. The Court granted this request, extending the time for  
7 Plaintiff to file her motion until June 24, 2005, on the condition  
8 that no reply to any response to that motion would be permitted  
9 without further order of the Court. Order (doc. # 46). As such,  
10 Defendants' pending motion for leave to file a sur-reply in  
11 opposition to that enlargement (doc. # 39) is denied and dismissed  
12 as moot.

13 On June 24, 2005, Plaintiff filed her cross-motion for summary  
14 judgment and response to Defendants' motion for summary judgment  
15 (doc. # 41), and on July 26, 2005, Defendants filed their response  
16 to Plaintiff's cross-motion and reply in support of their motion  
17 (doc. # 54). Plaintiff then requested leave to file a reply in  
18 support of her motion (doc. # 50). That request was denied. Order  
19 (doc. # 53). Having carefully considered the arguments raised by  
20 the parties in support of their respective motions for summary  
21 judgment, the Court now rules.

22 **I. BACKGROUND**

23 Plaintiff began her employment with Intel on June 14, 1999.  
24 Defs.' Statement of Facts (doc. # 34) ("DSOF"), Ex. 1 ¶ 2.  
25 Suffering from chronic migraine headaches, she took a medical leave  
26 of absence and, on October 22, 2001, applied for benefits pursuant  
27 to an ERISA Short Term Disability Plan established by Intel. Id.,  
28 Ex. 7, Doc. 379. Her application stated that she experienced

1 chronic migraine headaches for which she required treatment several  
2 times a week. Id.

3 On April 12, 2002, Matrix asked Dr. Keith Nachmanson to  
4 conduct an independent medical examination ("IME") of Plaintiff,  
5 and to provide an evaluation of her disability under the Short-Term  
6 Disability Plan. Id., Ex. 6, Attach. A. That plan defines  
7 "disability" as "any illness or injury that is substantiated by  
8 objective medical findings and which renders a participant  
9 incapable of performing work."<sup>1</sup> In his written report of June 13,  
10 2002, Dr. Nachmanson concluded that Plaintiff was "totally disabled  
11 from any type of occupation." Id., Ex. 6, Attach. B at 8.

12 Prior to applying for benefits under the LTD Plan, claimants  
13 are required to exhaust disability benefits under the Short-Term  
14 Disability Plan. Id., Ex. 1 ¶ 5. Plaintiff's short-term  
15 disability benefits were due to expire on October 11, 2002. See  
16 id., Ex. 7, Doc. 318. On February, 19, 2002, Matrix sent Plaintiff  
17 a letter explaining the LTD Plan along with an enclosed application  
18 for LTD benefits and forms for her physicians to complete. Id.,  
19 Ex. 7, Docs. 318-20. Matrix sent a second letter and copy of the  
20 LTD package on March 21, 2002, and requested a response by April  
21 19, 2002. Id., Ex. 7, Docs. 316-17. On September 5, 2002, Matrix  
22 received Plaintiff's application for LTD benefits, identifying Drs.  
23 Stuart Hetrick, Susan Wojcik, Michael Castillo, and Philip Ku as  
24 her treating physicians. Id., Ex. 7, Doc. 321. Matrix then sent  
25 each of the listed providers the Plan's definitions of "disability"

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<sup>1</sup> Unlike the LTD Plan, the Short-Term Disability Plan does not  
28 separately define the phrase "objective medical findings."

1 and "objective medical findings," and requested information to aid  
2 its determination of Plaintiff's eligibility for LTD benefits.  
3 Id., Ex. 7, Docs. 293-98, 304-06. Matrix also transmitted a  
4 Physical Capacities Assessment Form for each provider to complete,  
5 and requested all medical records for the period of October 15,  
6 2001 through Plaintiff's last office visit. Id., Ex. 7, Docs. 300-  
7 03. All medical documents received before December 1, 2002 were  
8 included in the claim file. See id., ¶¶ 20-21; id., Ex. 7, Docs.  
9 6-183.

10 The LTD Plan defines disability as "any illness or injury that  
11 is substantiated by objective medical findings." DSOF, Ex. 1,  
12 Attach. A at 1. The phrase "objective medical findings" is further  
13 defined as follows:

14 "Objective Medical Findings" means a measurable  
15 abnormality which is evidenced by one or more standard  
16 medical diagnostic procedures including laboratory tests,  
17 physical examination findings, X-rays, MRI's, EEG's,  
18 "Catscans" or similar tests that support the existence of  
19 a disability or indicate a functional limitation. . . .  
20 To be considered an abnormality, the test result must be  
21 clearly recognizable as out of the range of normal for a  
22 healthy population; the significance of the abnormality  
23 must be understood and accepted by the medical community.

24 Id. at 4. As the administrator and fiduciary of the Plan, Intel  
25 has "the sole discretion to interpret the terms of the Plan and to  
26 determine eligibility for benefits." Id. at 13. Pursuant to a  
27 provision of the Plan allowing Intel to delegate certain fiduciary  
28 responsibilities, Intel delegated its authority in these areas to  
Matrix in a written Service Agreement. Id., Ex. 1, Attach. A at  
14; id., Ex. 2, Attach. A at 1-4.

29 Based on the information before it, Matrix concluded that  
30 Plaintiff's file did not support the finding of a "disability"

1 substantiated by "objective medical findings" as those terms are  
2 defined in the Plan. Id., Ex. 7, Docs. 240-46. Matrix explained  
3 this as the reason for its denial in a letter dated December 2,  
4 2002, which reviewed Plaintiff's medical history and the operative  
5 terms of the Plan. See id., Ex. 7, Docs. 240-43. In that letter,  
6 Matrix also apprised Plaintiff of her right to appeal the denial  
7 decision, and provided her a copy of Intel's disability appeal  
8 procedure. Id., Ex. 7, Docs. 240-46. Under the appeal procedure,  
9 a claimant may appeal an adverse benefit determination within 180  
10 days of the Administrator's decision. Id., Ex. 7, Doc. 244.

11 On December 10, 2002, Plaintiff notified Matrix of her  
12 decision to appeal its decision, and requested a thirty-day  
13 extension of time in which to submit additional documents for the  
14 Appeals Committee's (the "Committee") consideration. Id., Ex. 7,  
15 Docs. 262-63. Matrix granted the requested extension of time.  
16 Id., Ex. 7, Docs. 255-59. A second extension was granted on  
17 January 8, 2003, extending the deadline to February 12, 2003. Id.,  
18 Ex. 7, Docs. 247-48. During this time, Plaintiff submitted a  
19 letter from Dr. Castillo, a list of medications dated February 11,  
20 2003, a Physical Capacities Assessment Form by Dr. Castillo, and a  
21 letter from Dr. Muriel McClellan. Id., Ex. 7, Docs. 190-201.

22 On December 23, 2002, Matrix requested an independent review  
23 of Plaintiff's claim file by a neurologist selected by CORE, an  
24 independent clearinghouse for medical peer reviews with no  
25 affiliation with either Matrix or Intel. Id., Ex. 7, Docs. 249-50.  
26 The Peer Review Analysis Case Report of Dr. Dennis Nitz  
27 acknowledged Dr. Walker's findings of hypomobility and spasm on the  
28 left side of Plaintiff's upper cervical spine, as well as X-ray

1 indications of facet arthrosis in the lumbar spine, but noted that  
 2 Plaintiff's neurological examinations and MRI's produced normal  
 3 results. Id., Ex. 7, Docs. 2-5. Based on his review of the claim  
 4 file, Dr. Nitz concluded that "[Plaintiff's] subjective complaints  
 5 are not corroborated by any significant objective findings." Id.,  
 6 Ex. 7, Doc. 4.

7 On February 20, 2003, the Committee reviewed the original  
 8 claim file, Dr. Nitz's independent peer review report, as well as  
 9 all documents received from Plaintiff prior to that date. Id., Ex.  
 10 2 ¶ 19. The Committee determined that Matrix's initial denial of  
 11 benefits was proper, because the record did not present evidence of  
 12 a "disability" substantiated by "objective medical findings" as  
 13 those terms are defined in the Plan. Id., Ex. 2, Attach. C. As  
 14 before, the Committee explained this as the basis for its decision  
 15 in a letter dated March 11, 2003 reviewing Plaintiff's medical  
 16 history and the operative terms of the Plan. Id. This letter also  
 17 apprised Plaintiff of her rights under ERISA. Id.

18 On March 11, 2004, Plaintiff filed a complaint (doc. # 1) in  
 19 this Court, later amended on August 9, 2004 (doc. # 14), seeking  
 20 retrospective and prospective relief under 29 U.S.C. § 1132.

21 **II. STANDARD OF REVIEW**

22 Summary judgment is appropriate "when there is no genuine  
 23 issue of material fact" such that "the moving party is entitled to  
 24 judgment as a matter of law." Fed. R. Civ. P. 56. In determining  
 25 whether to grant summary judgment, a district court must view the  
 26 underlying facts and the inferences to be drawn from those facts in  
 27 the light most favorable to the nonmoving party. See Matsushita  
 28 Elec. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

1       If a party will bear the burden of proof at trial as to an  
2 element essential to its claim, and fails to adduce evidence  
3 establishing a genuine issue of material fact with respect to the  
4 existence of that element, then summary judgment is appropriate.  
5 See Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). Not  
6 every factual dispute is capable of defeating a properly supported  
7 motion for summary judgment. Rather, the party opposing the motion  
8 must show that there is a genuine issue of material fact. See  
9 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). A  
10 factual dispute is genuine if the evidence is such that a rational  
11 trier of fact could resolve the dispute in favor of the nonmoving  
12 party. Id. at 248. A fact is material if determination of the  
13 issue might affect the outcome of the case under the governing  
14 substantive law. Id. Thus, a party opposing a motion for summary  
15 judgment cannot rest upon bare allegations or denials in the  
16 pleadings, but must set forth specific facts demonstrating a  
17 genuine issue for trial. See id. at 250. If the nonmoving party's  
18 evidence is merely colorable or not significantly probative, a  
19 court may grant summary judgment. See id. at 249; accord Cal.  
20 Architectural Build. Prods., Inc. v. Franciscan Ceramics, 818 F.2d  
21 1466, 1468 (9th Cir. 1987).

22       Finally, the fact that both parties have moved for summary  
23 judgment does not alter these standards. "It is well settled that  
24 a court's duty to ascertain whether facts remain in contention is  
25 not obviated by cross motions for summary judgment." Eby v. Reb  
26 Realty, Inc., 495 F.2d 646, 649 (9th Cir. 1974).

27       . . .

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1     **III. DISCUSSION**2         **A. Standard of Judicial Review in § 1132 Actions**

3         Although ERISA creates private rights of action allowing plan  
4 participants and beneficiaries to challenge benefit eligibility  
5 determinations, the statute does not set out the standard of  
6 judicial review for such actions. See 29 U.S.C. § 1132. While  
7 many federal courts initially filled this gap by adopting the  
8 deferential arbitrary and capricious standard of review applied in  
9 actions under the Labor Management Relations Act, see, e.g., Jung  
10 v. FMC Corp., 755 F.2d 708, 711-12 (9th Cir. 1985), the Supreme  
11 Court has since stated that the determination of the appropriate  
12 standard of for § 1132 actions should be guided by principles of  
13 trust law. See Firestone Tire & Rubber, Co. v. Bruch, 489 U.S.  
14 101, 107-111 (1989). Thus, if a plan confers discretion on its  
15 administrator to interpret the plan's terms or to make benefit  
16 eligibility determinations, the administrator's decisions are  
17 entitled to deference, and are reviewed for abuse of discretion.  
18 Id. at 111-15. Absent such discretionary authority, courts must  
19 review the administrator's decisions de novo. Id. at 115.

20         However, even if a plan administrator has discretionary  
21 authority, a court may engage in a more searching review if the  
22 administrator's decision was tainted by a conflict of interest.  
23 Id. "Because the great deference accorded a plan administrator  
24 arises in part from the assumption of trust law that the trustee  
25 has no pecuniary interest in his decisions, proof that the trustee  
26 does have such interest correspondingly strengthens the court's  
27 level of review." Bogue v. Ampex Corp., 976 F.2d 1319, 1325, n.29  
28 (9th Cir. 1992). In Firestone, the Supreme Court noted that if an

1 administrator is "operating under a conflict of interest, that  
2 conflict must be weighed as a factor in determining whether there  
3 is an abuse of discretion." Firestone, 489 U.S. at 115 (internal  
4 quotations omitted). The Ninth Circuit has interpreted this  
5 language as requiring "heightened scrutiny" of decisions made by  
6 conflicted plan administrators. Atwood v. Newmont Gold Co., 45  
7 F.3d 1317, 1322 (9th Cir. 1995).

8 The Ninth Circuit has repeatedly used a two-part test in  
9 deciding whether to invoke "heightened scrutiny," noting that the  
10 appearance of conflict alone is not sufficient. See, e.g.,  
11 Friedrich v. Intel Corp., 181 F.3d 1105 at 1109-10 (9th Cir. 1999).  
12 First, the beneficiary must produce "material, probative evidence"  
13 tending to show that the administrator's apparent conflict actually  
14 caused a breach of a fiduciary duty owed to the beneficiary.  
15 Atwood, 45 F.3d at 1322. If the beneficiary makes this showing,  
16 the burden shifts to the plan administrator to demonstrate that its  
17 decision was not tainted by the apparent conflict. Id. If the  
18 plan fails to meet its burden, the administrator's decision is  
19 reviewed de novo. Id.

20 In their respective motions for summary judgment, Plaintiff  
21 argues for de novo review of her § 1132 claim under the "heightened  
22 scrutiny" test, while Defendants argue for more deferential review  
23 under the abuse of discretion standard. Pl.'s Mot. (doc. # 41) at  
24 15-18; Defs.' Mot. (doc. # 33) at 9-10. In order to succeed on  
25 summary judgment in establishing "heightened scrutiny" as the  
26 appropriate standard of review, Plaintiff must adduce "material,  
27 probative evidence" that Matrix's denial decision was colored by  
28 conflict, and this evidence must go unrebutted by Matrix.

1 Likewise, to succeed on summary judgment in establishing abuse of  
 2 discretion as the appropriate standard of review, Matrix must show  
 3 that (1) the Plan vests it with discretionary authority in  
 4 construing the Plan's terms and making benefits determinations, and  
 5 (2) Plaintiff has failed to establish a genuine issue of material  
 6 fact as to whether its denial decision was colored by conflict.

7 See Celotex Corp., 477 U.S. at 322-23.

8 In the present case, it is uncontested that the Plan grants  
 9 Intel, the named fiduciary for plan administration, the discretion  
 10 to interpret the terms of the Plan and to determine eligibility for  
 11 benefits. DSOF ¶ 2; Pl.'s Controverting Statement of Facts (doc. #  
 12 43) ("PCSOF") ¶ 2. Nevertheless, Plaintiff contends that the Court  
 13 should invoke "heightened scrutiny," because Intel's dual role as  
 14 plan administrator and sponsor poses an inherent conflict of  
 15 interest.<sup>2</sup> Pl.'s Mot. (doc. # 41) at 15-18. Plaintiff argues that  
 16 there is ample evidence that this apparent conflict influenced the  
 17 denial of benefits, because (1) Matrix failed to provide

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19 <sup>2</sup> In an effort to preclude any inquiry into "heightened  
 20 scrutiny," Defendants argue that Intel's dual role as plan sponsor  
 21 and administrator fails to manifest even an appearance of conflict,  
 22 because Intel had contractually delegated its authority to review  
 23 claims and grant plan benefits to Matrix. Reply (doc. # 54) at 5-6.  
 24 Defendants cite no law in support of this view. Although a similar  
 25 question was raised in Eley v. Boeing Co., 945 F.2d 276 (9th Cir.  
 26 1991), the Ninth Circuit decided that case on separate grounds,  
 27 leaving the issue unresolved. See id. at 278. In the present case,  
 28 it is sufficient to note that Intel's delegation of authority to  
 Matrix does not negate the appearance of conflict, because Intel's  
 financial influence over Matrix under the Service Agreement renders  
 Matrix susceptible to the taint of Intel's conflict. See DSOF, Ex.  
 2, Attach. 1 at 3 (providing for payment by Intel of \$294,356 in fees  
 to Matrix during the initial one-year term of the Service Agreement).  
 Accordingly, the fact of Intel's contract with Matrix is more  
 appropriately considered as one factor in determining whether the  
 Administrator's decision was actually tainted by conflict.

1 Plaintiff's complete medical records to Dr. Nachmanson, and  
2 subsequently relied on his IME report in reaching its decision; (2)  
3 Matrix did not correctly interpret and apply the Plan's definitions  
4 of "disability" and "objective medical findings" in reaching its  
5 decision; and (3) Matrix failed to consider Plaintiff's Social  
6 Security Disability award in considering Plaintiff's eligibility  
7 for benefits. Id. at 17-18.

8 **1. Provision of Limited Records to IME Physician**

9 Plaintiff asserts that Matrix's limited provision of medical  
10 records to Dr. Nachmanson is similar to Intel's conduct in  
11 Friedrich, where the Ninth Circuit affirmed the district court's  
12 application of de novo review based, in part, on the administrative  
13 record's lack of written reports by the beneficiary's treating  
14 physicians. Id. at 15; see Friedrich, 181 F.3d at 1110.

15 However, the claim administration problems in Friedrich ran  
16 much deeper than the quantum of information made available to IME  
17 physicians, and the quality of information considered by the plan  
18 administrator. In Friedrich, the Ninth Circuit observed the  
19 following additional evidence of conflict: (1) Intel failed to give  
20 Friedrich a LTD claim packet that would have put him on notice of  
21 the application requirement and the criteria for benefits  
22 determinations; (2) Intel provided Friedrich with insufficient  
23 notice of the denial of his claim; and (3) Intel's review procedure  
24 unfairly deprived Friedrich of the opportunity to demonstrate  
25 disability. Id. Indeed, a review of the district court's factual  
26 findings reveals the extent to which Intel's apparent conflict  
27 infected its claim handling in that particular case:

28 ...

1           On February 19, 1993, [the plan administrator] wrote a  
 2 letter to Friedrich notifying him that he was not  
 3 eligible for Long Term Disability Benefits based upon her  
 4 review of his medical records, and told him that his  
 5 [short term disability] benefits would cease in May  
 6 1993. . . . Friedrich had not even applied for Long Term  
 7 Disability benefits when Intel deemed him to have applied  
 8 and then denied such benefits without even telling him  
 9 whether Intel needed more information before it could  
 10 make a reasoned decision as to his entitlement.  
 11

12           Friedrich v. Intel Corp., 21 Employee Benefits Cases (BNA) 2203,  
 13 2205 (E.D. Cal. 1997) (emphasis added).

14           Although Plaintiff claims that Matrix's failure to provide Dr.  
 15 Nachmanson with her complete medical records prior to his IME "is  
 16 similar to the action taken be Intel" in Friedrich, see Pl.'s Mot.  
 17 (doc. # 41) at 17, the instant case lacks many of the disturbing  
 18 details that informed the court's finding of conflict in Friedrich.  
 19 Unlike Intel's conduct in Friedrich, Matrix twice notified  
 20 Plaintiff of her opportunity to file her claim for LTD benefits,  
 21 and both times furnished her with a claim filing packet detailing  
 22 the Plan's terms and eligibility criteria. Id., Ex. 7, Docs. 318-  
 23 20, 316-17. In addition, Matrix solicited and considered numerous  
 24 other medical records, including written reports from Plaintiff's  
 25 treating physicians. Id., Docs. 293-98, 304-06. Dr. Nachmanson's  
 1 report was only one of many reports reviewed and relied upon by  
 2 Matrix. Moreover, Matrix initially requested Dr. Nachmanson's IME  
 3 report to confirm Plaintiff's eligibility for short-term disability  
 4 benefits, not LTD benefits, and the report was actually favorable  
 5 to Plaintiff in that regard by finding her eligible. See DSOF, Ex.  
 6 2 ¶ 9; id., Ex. 6, Attach. B. Therefore, Matrix's failure to  
 7 furnish Dr. Nachmanson with Plaintiff's complete records at the  
 8 time of his evaluation does not tend to show that Matrix breached

1 any fiduciary duty owed to Plaintiff.

2 Alternatively, Plaintiff's argument may be fairly interpreted  
 3 as suggesting that Matrix's failure to provide her complete medical  
 4 records to Dr. Nachmanson evinces an effort to sculpt the  
 5 administrative record and thereby justify its denial of LTD  
 6 benefits. However, this argument also fails. Apparently, to avoid  
 7 the appearance of conflict under this theory, Matrix should either  
 8 have excluded the initial IME report from the file when reviewing  
 9 Plaintiff's application for LTD benefits, or ordered a new IME for  
 10 determining eligibility for LTD benefits. Of course, Matrix was  
 11 under no obligation to do either. Indeed, it would have been more  
 12 troubling had Matrix excluded Dr. Nachmanson's report, as the  
 13 report was actually favorable with respect to Plaintiff's  
 14 eligibility for short term disability benefits.

15 Therefore, the Court concludes that no reasonable trier of  
 16 fact could find that Matrix's omission amounted to "material,  
 17 probative evidence" of a decision tainted by conflict.

18 **2. Erroneous Interpretation and Application of Plan Terms**

19 Plaintiff claims that Matrix strayed from the Plan's terms by  
 20 premising its denial letter on a lack of "substantial"<sup>3</sup> findings,  
 21 rather than a lack of "objective medical findings," arguing that  
 22 this proves that the denial was colored by conflict. Pl.'s Mot.

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23  
 24 <sup>3</sup> There is no mention of "substantial" findings anywhere in  
 25 Matrix's letter-- only a statement that "[t]he Plan requires that a  
 26 Participant's inability to work be substantiated by objective medical  
 27 findings as defined in the Plan document." Id. at 242 (emphasis  
 28 added). Properly understood, this phrase does not reflect a  
 subject standard as Plaintiff suggests, see Pl.'s Mot. (doc. # 41)  
 at 17-18, but merely reiterates the Plan's definition of  
 "disability." See DSOF, Ex. 7 at 240, 242; DSOF, Ex. 1, Attach. 1 at  
 1-2.

1 (doc. # 41) at 17-18. The evidence repudiates this. Matrix's  
 2 denial letter not only quotes the Plan's definition of "objective  
 3 medical findings," but states that the claim was denied because the  
 4 Administrator had "determined that objective medical findings do  
 5 not support a disability as defined by the Plan . . . ." DSOF, Ex.  
 6 7 at 240-242. (emphasis added).

7 Alternatively, Plaintiff argues that Matrix "deliberately  
 8 ignored or inadequately considered the evidence of record" in  
 9 determining that there were no "objective medical findings" to  
 10 substantiate her disability. Pl.'s Mot. (doc. # 41) at 17. In  
 11 particular, she notes that an abnormal polysomnography report  
 12 demonstrates the existence of severe obstructive sleep disordered  
 13 breathing, and claims that her X-ray and MRI present evidence of  
 14 straightening of the cervical lordosis caused by muscled spasms<sup>4</sup>--  
 15 all of which Dr. Nachmanson has opined to be objective findings  
 16 substantiating chronic cervicogenic headaches. Id. at 13; id.,  
 17 App. 18 at 12-13, 19-20. For the following reasons, the Court does  
 18 not agree that Matrix's review of the record was so inadequate as  
 19 to establish a breach of fiduciary duty to Plaintiff.

20 First, Plaintiff's abnormal polysomnography report was not  
 21 obtained until February 14, 2004-- after the Committee had reviewed  
 22 her appeal-- and therefore, was never part of the administrative  
 23

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24 <sup>4</sup> Plaintiff also notes that she had an elevated SED rate, but  
 25 admits that the elevation, according to her neurologist's finding, is  
 26 not significant. See Pl.'s Mot. (doc. # 41) at 12, n.3, 13. Under  
 27 the Plan, "objective medical findings" must be "clearly recognized as  
 28 out of range for a normal healthy population." DSOF, Ex. 1, Attach.  
 A at 1, 4. Therefore, it does not appear that her elevated SED rate  
 would constitute an "objective medical finding" under the Plan so as  
 to support the claim that Matrix inadequately considered the evidence  
 of record.

1 record. Compare id., App. 12 (polysomnography indicating mild  
 2 obstructive sleep disordered breathing conducted on April 17, 2002)  
 3 with id., App. 16 (polysomnography indicating severe obstructive  
 4 sleep disordered breathing conducted on February 14, 2004).  
 5 Because Plaintiff's argument takes issue with Matrix's allegedly  
 6 inadequate consideration of the "evidence of record," the Court  
 7 finds it entirely appropriate to limit its review to the  
 8 administrative record in evaluating this argument.<sup>5</sup> It is too  
 9 obvious to merit extended discussion why Matrix could not  
 10 reasonably have been expected to consider a report that did not  
 11 even exist at the time of its review.

12 Second, as to the X-ray and MRI images showing straightening  
 13 of the cervical lordosis, the administrative record appears at best  
 14 to be conflicted as to whether those studies present "objective  
 15 medical findings" substantiating a disability. Even Plaintiff's  
 16 treating physicians disagreed on the issue. For example, Dr.  
 17 Castillo concluded that these studies presented "objective medical  
 18 findings" of Plaintiff's incapacitating headaches, while Dr.

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19

20       <sup>5</sup> The Court's review in an ERISA action is not axiomatically  
 21 limited to the administrative record. Although Defendants correctly  
 22 note that evidence outside the administrative record is irrelevant to  
 23 whether an administrator abused its discretion, this rule is  
 24 predicated on the Court's adoption of the abuse of discretion  
 25 standard. See Reply (doc. # 54) at 16; Taft v. Equitable Life  
Assurance Soc'y, 9 F.3d 1469, 1471-72 (9th Cir. 1993) (the rule  
 26 avoids the anomalous conclusion that an administrator abused its  
 27 discretion by failing to consider evidence that was never before it).  
 28 The Court is therefore not limited to the administrative record in  
 its "heightened scrutiny" analysis, which inherently precedes any  
 determination that the plan administrator is entitled to deferential  
 review. Tremain v. Bell Indus., Inc., 196 F.3d 970, 976-77 (9th Cir.  
 1999). In the instant case, however, Plaintiff argues that Matrix  
 inadequately considered the evidence of record, requiring the Court  
 to limit its review to the administrative record.

1 Hetrick found that "[n]one of these studies were able to provide a  
 2 clue of the etiology of her head pain." PCSOF, App. 3; DSOF, Ex. 7  
 3 at 16. The fact that Matrix apparently did not give as much weight  
 4 to the report most favorable to the claimant does not, by itself,  
 5 suggest that it reviewed the record with a deliberately blind eye  
 6 bent on denying the claim. To hold otherwise, would invite  
 7 "heightened scrutiny" in nearly every case in which a plan  
 8 administrator reaches a decision adverse to the claimant. Such an  
 9 extension of "heightened scrutiny" would swallow the rule of  
 10 Firestone, in which the Supreme Court established abuse of  
 11 discretion as the standard of review for decisions of  
 12 administrators vested with discretionary authority. Furthermore,  
 13 the mere fact of an adverse decision does not, by itself, establish  
 14 breach of fiduciary duty. See Atwood, 45 F.3d at 1323.

15 Therefore, the Court cannot conclude that Matrix's allegedly  
 16 inadequate consideration of the evidence of record constitutes  
 17 "material, probative evidence" tending to show that its decision  
 18 was swayed by an apparent conflict of interest.

19 **3. Failure to Consider Social Security Disability Award**

20 Finally, Plaintiff argues that Matrix's failure to consider  
 21 her Social Security disability award is evidence that Matrix's  
 22 denial decision was swayed by self interest. Pl.'s Mot. (doc. #  
 23 41) at 18. This argument is unpersuasive for two reasons.

24 First, Plaintiff cites Riedl v. General Am. Life Ins. Co., 248  
 25 F.3d 753 (8th Cir. 2001) for the proposition that courts have held  
 26 that a Social Security disability award "should be considered by  
 27 [an] insurer." Pl.'s Mot. (doc. # 41) at 18 (emphasis added).  
 28 Plaintiff construes Riedl too broadly. In Riedl, the court merely

1 stated that "[a]lthough the Social Security Administration's  
 2 determination is not binding, it is admissible evidence to support  
 3 an ERISA claim." See Riedl, 248 F.3d at 759, n.4. The statement,  
 4 appearing in footnote, does not impose an affirmative obligation on  
 5 either the courts or plan administrators to consider such evidence  
 6 in every ERISA case.<sup>6</sup> The statement is not even directed toward  
 7 plan administrators. Rather, the remark simply affirmed the  
 8 admissibility of evidence, which the court considered in applying  
 9 the de novo standard of review. See id. at 756, 759, n.4.  
 10 Furthermore, the court adopted the de novo standard in that case,  
 11 because the administrator lacked discretionary authority under the  
 12 plan, and not because of any evidence that it acted as a conflicted  
 13 fiduciary.<sup>7</sup> See id. at 755-56. Therefore, there is nothing in  
 14 Riedl to suggest that an administrator should consider a Social  
 15 Security disability award in determining eligibility for plan  
 16 benefits, or that the failure to do so would constitute a breach of  
 17 fiduciary duty.

18 Although Riedl does not establish a basis for applying  
 19 "heightened scrutiny," the Court considers independently whether  
 20 Matrix's failure to consider Plaintiff's Social Security disability  
 21 award constitutes material evidence of a conflicted fiduciary. Due  
 22

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23         <sup>6</sup> Likewise, no such mandatory duty arises under the earlier  
 24 Eighth Circuit case upon which Riedl relied. See Duffie v. Deere &

25 Co.

26         <sup>7</sup> Similarly in Duffie, the predecessor case to Riedl, the Eighth  
 27 Circuit found that de novo review should apply, because the  
 28 administrator lacked discretion, and not because of any apparent  
 conflict. See Duffie, 111 F.3d at 72.

1 to notable differences between the Social Security Act and the  
2 Plan, the Court finds that it does not. For example, while mental  
3 impairment may be a basis for Social Security disability benefits,  
4 it is specifically excluded from eligibility under the Plan.<sup>8</sup> See  
5 42 U.S.C. § 423(d); see also DSOF, Ex. 1, Attach. A at 5-6.  
6 Moreover, Social Security disability benefits determinations are  
7 made in view of the combined effect of all impairments from which  
8 an individual may suffer. See 42 U.S.C. § 423(d). This cumulative  
9 approach is precluded by the Plan's narrower definition of  
10 disability in the singular as "any illness or injury that is  
11 substantiated by objective medical findings." See DSOF, Ex. 1,  
12 Attach. A at 1.

13 In light of the differences between the Plan and the Social  
14 Security Act, the Court cannot find Matrix's failure to consider  
15 Plaintiff's Social Security Award to be "material, probative  
16 evidence" that it acted as a conflicted fiduciary in denying her  
17 claim. There is simply no requirement that a plan administrator,  
18 vested with discretionary authority in its determinations, must  
19 give weight to factual findings made by different bodies under  
20 disparate standards in order to shield its own determination from  
21 more searching review by the courts.

22 All of Plaintiff's foregoing arguments, considered  
23 independently or together, fail to raise any genuine issue of  
24 material fact as to whether Matrix's decision was infected by  
25 conflict, and so, do not satisfy her initial burden under the Ninth  
26

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27 <sup>8</sup> In noting this distinction, the Court makes no finding as to  
28 whether Plaintiff's cervicogenic headaches constitute a physical or  
mental impairment.

1 Circuit's "heightened scrutiny" test. Furthermore, because it is  
2 undisputed that the Plan grants discretionary authority to the  
3 Administrator in construing the Plan's terms and determining  
4 eligibility for benefits, the Court finds that it is appropriate to  
5 adopt the abuse of discretion standard on Defendants' motion for  
6 summary judgment.

7 **B. Whether Matrix Abused Its Discretion**

8 An ERISA plan administrator abuses its discretion if (1) it  
9 renders a decision without any explanation, (2) it construes  
10 provisions of the plan in a way that conflicts with the plain  
11 language of the plan, or (3) it relies on clearly erroneous  
12 findings of fact in making benefit determinations. Taft, 9 F.3d at  
13 1472-73. Because an administrator cannot abuse its discretion by  
14 failing to consider evidence that was never before it, the district  
15 court's review is limited to evidence that was part of the  
16 administrative record. Id. at 1471-72. For the reasons below, the  
17 Court finds that there is no genuine issue of material fact on the  
18 issue of whether Matrix abused its discretion in determining  
19 Plaintiff's eligibility for LTD benefits.

20 First, Matrix's detailed denial letter of December 2, 2002  
21 clearly sets forth the reasons for its decision by reviewing  
22 Plaintiff's medical history and the operative terms of the Plan in  
23 three-and-a-half single-spaced pages. DSOF, Ex. 7 at 240-43.  
24 Likewise, the Appeals Committee's written letter of March 11, 2003  
25 affirming that decision similarly explains the basis for the  
26 denial. Id., Ex. 2, Attach. C at 1-4. Therefore, it cannot be  
27 said that Matrix abused its discretion by rendering a decision  
28 without explanation.

1       Second, Matrix's conclusion that Plaintiff was not disabled  
 2 did not conflict with the plain language of the Plan. The LTD Plan  
 3 defines disability as "any illness or injury that is substantiated  
 4 by objective medical findings." DSOF, Ex. 1, Attach. A at 1. The  
 5 phrase "objective medical findings" is further defined as follows:

6       "Objective Medical Findings" means a measurable  
 7 abnormality which is evidenced by one or more standard  
 8 medical diagnostic procedures including laboratory tests,  
 9 physical examination findings, X-rays, MRI's, EEG's,  
 10 "Catscans" or similar tests that support the existence of  
a disability or indicate a functional limitation. . . .  
 11 To be considered an abnormality, the test result must be  
 12 clearly recognizable as out of the range of normal for a  
 13 healthy population; the significance of the abnormality  
must be understood and accepted by the medical community.

14       Id. at 4 (emphasis added). As discussed in Part II.A.3, supra,  
 15 there was ample evidence in the record to support Matrix's  
 16 conclusion that there were no "objective medical findings" as  
 17 defined in the plan. For instance, although Plaintiff had  
 18 undergone MRI's, spinal taps, and other laboratory studies, Dr.  
 19 Hetrick, admitted in his October 15, 2002 letter that "[n]one of  
 20 these studies were able to provide a clue of the etiology of her  
 21 head pain." DSOF, Ex. 7 at 16. Indeed, many of her test results  
 22 at the time of Matrix's review were within normal limits, and thus,  
 23 not indicative of a "measurable abnormality." For example, her  
 24 comprehensive metabolic panel yielded results within the reference  
 25 range, and in a report dated July 11, 2002, Dr. Hetrick noted that  
 26 her brain MRI was "entirely within normal limits." Id. at 32, 50.  
 27 Accordingly, there is no indication that Matrix abused its  
 28 discretion by departing from the plain terms of the Plan.

Finally, there is no indication that Matrix relied on clearly erroneous findings of fact in reaching its decisions. Plaintiff

1 does not dispute the validity or accuracy of the evidence in the  
2 record. Instead, she argues that Matrix "ignored or inadequately  
3 considered the evidence" in determining that there were no  
4 "objective medical findings."<sup>9</sup> Pl.'s Mot. (doc. # 41) at 17. To  
5 prevail on this argument, Plaintiff must show either (1) that the  
6 administrative record is at least substantially inconsistent with  
7 Matrix's conclusion, or (2) that the evidence upon which Matrix  
8 relied was clearly erroneous. Neither is the case here. First, as  
9 discussed above, the administrative record contains ample evidence  
10 to support Matrix's conclusion that Plaintiff's chronic migraine  
11 headaches were not substantiated by "objective medical findings."  
12 Second, the Court has thoroughly reviewed the administrative record  
13 submitted by the parties, and cannot say that the factual findings  
14 were so clearly erroneous that Matrix abused its discretion in  
15 relying on them.

16 Because Plaintiff has failed to establish a genuine issue of  
17 material fact as to whether Matrix abused its discretion in denying  
18 her LTD benefits, the Court must grant Defendant's motion for  
19 summary judgment.

20 **IV. CONCLUSION**

21 In light of the forgoing analysis,

22 IT IS ORDERED that Defendants' motion for leave to file sur-  
23 reply to Plaintiff's reply to Defendants' response to Plaintiff's

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24  
25 <sup>9</sup> Although Plaintiff initially raised this argument in an effort  
26 to show a conflict of interest under the "heightened scrutiny" test,  
see Pl.'s Mot. (doc. # 41) at 17, she has also argued that she should  
27 prevail under the abuse of discretion standard of review. See id. at  
18. Therefore, the Court will also construe this as an argument that  
28 Matrix abused its discretion by relying on clearly erroneous findings  
of fact in denying Plaintiff benefits.

1 motion of an extension of time to file her cross-motion for summary  
2 judgment (doc. # 39) is DENIED and dismissed as moot.

3 IT IS FURTHER ORDERED that Defendants' motion for summary  
4 judgment (doc. # 33) is GRANTED.

5 IT IS FURTHER ORDERED that Plaintiff's motion for summary  
6 judgment (doc. # 41) is DENIED.

7 IT IS FURTHER ORDERED directing the Clerk of Court to enter  
8 judgment in favor of Defendants and terminate this case.

9 DATED this 12th day of December, 2005.

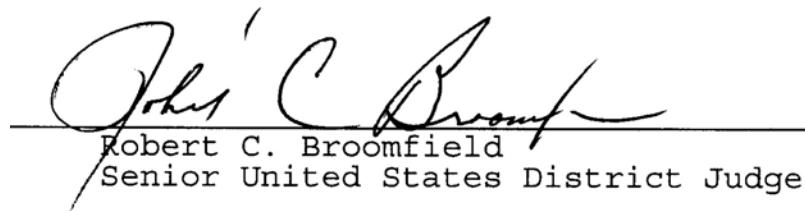
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Robert C. Broomfield  
Senior United States District Judge

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Copies to counsel of record

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